STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2017-370-E, 2017-305-E, AND 2017-207-E

In Re:	)	
	)	
Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plan	)	PETITION FOR REHEARING OR RECONSIDERATION

INTRODUCTION

Pursuant to S.C. Code Ann. Section 58-27-2150 and Commission Rules 103-825 and 103-854, the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy ("Conservation Groups") hereby petition the Public Service Commission of South Carolina for rehearing or reconsideration of Order No. 2018-804, issued on December 21, 2018 in the above-captioned dockets (the "Order").

The Order, among other things, approved the merger of Dominion Energy, Inc. and SCANA Corporation, South Carolina Electric & Gas Company's ("SCE&G") parent company, and found the merger to be in the public interest without including conditions that will fully protect SCE&G's captive retail ratepayers from costs that arise from affiliate transactions involving unnecessary pipeline capacity. Of particular concern here is Dominion's pattern and practice of making captive ratepayers of its regulated

subsidiary pay for the parent company's Atlantic Coast Pipeline ("ACP") project without any prior review of whether individual natural gas supply contracts that are signed by the electric utility and used to obtain approval for the project from federal regulators are needed or economic for customers – and despite proof showing the project and contracts are neither needed nor economic.

The Conservation Groups and the Office of Regulatory Staff ("ORS") presented expert testimony at the evidentiary hearing demonstrating that the risk of abusive affiliate transactions is real and substantial, and recommending specific conditions to address this concern. These conditions were aimed at avoiding above-market costs that arise because a holding company has an incentive to transact with a higher-cost supplier when that supplier is an affiliate.

By requiring competition for certain large contracts through approval of the settlement between the Joint Applicants and Transcontinental Pipeline Company (the "Transco Settlement"), this Commission recognized that affiliate transaction issues are within the scope of a merger proceeding. However, the Commission completely failed to address the specific, controverted issues raised by the Conservation Groups regarding affiliate transactions that concern *unnecessary* pipeline capacity. The specific controverted issues the Conservation Groups raised were whether the public interest requires that natural gas supply contracts signed by an electric utility (which are also used to seek federal approval of new interstate gas transmission capacity) meet the identified need of its ratepayers (i.e., whether the contract is "needed") at the lowest cost (i.e., whether there are cheaper alternatives).

As recognized by Commissioner Ervin in his concurrence, Conservation Groups

proposed that the Commission address these issues by requiring Dominion to show to ORS and the Commission that it has: (i) identified and determined the amount of new fuel delivery resources needed to meet future demand, (ii) that it has objectively studied all available alternate fuel delivery resource options to meet the identified and determined need, and (iii) that it determined such contracts were the lowest cost option available taking into consideration fixed and variable costs and reasonable projections of utilization. Tr. p. 2291, ll. 5-11. As noted in the Rehearing Petition of ORS, Conservation Groups proposed that the "identification" requirement of provision (i) must include an analysis of the severity, frequency, seasonal timing of the need and that the showings considered in provisions (ii) and (iii) must demonstrate that all reasonable alternatives that might be used to meet the need have been evaluated prior to the signing of the specified pipeline contracts. As suggested by the support of ORS and the Speaker of the House, requiring a timely, prior assessment of the need for a gas supply contract, or setting minimum expectations for how that need must be shown, is certainly not "outside the scope" of this proceeding, or beyond the authority or jurisdiction of the Commission.

Testimony elicited through cross-examination of Dominion Energy witnesses showed that Dominion has a history of engaging in affiliate transactions that burden ratepayers for the cost of unneeded pipeline capacity, rendering critical the inclusion of ratepayer protections against both affiliate transactions generally, and unnecessary gas capacity contracts specifically. The Order, however, ignores evidence of Dominion's unfortunate record on this issue, and improperly fails to impose meaningful conditions on this type of exploitative affiliate transaction, completely failing to protect ratepayers from

natural gas contracts based on unproven need. It is essential to impose these protections *before* the federal pipeline approval process, because federal regulators do not examine whether underlying gas contracts are needed or economic for utility ratepayers. The federal approval process is, accordingly, no substitute for state-level review. Timely Commission review of gas contracts is also necessary because backward-looking review of the contracts in annual fuel proceedings will come too late to protect ratepayers, because the new pipeline will already have been built. As the V.C. Summer debacle shows, the best way to protect ratepayers from having to pay billions of dollars for a useless utility facility is to review the basis of the need for it beforehand through a full and fair evidentiary proceeding, with examination of alternatives. Once the money has been spent on a useless project, the horse has left the barn. This Commission should exercise its duty and obligation to mind the barn door before it opens.

The Conservation Groups respectfully submit that the Commission erred in disregarding material evidence concerning Dominion's past practice and its future intentions, in failing to properly address the contested issue of the need for natural gas contracts that may be used to finance future interstate pipelines, and in thereby failing to impose merger conditions necessary to protect SCE&G's ratepayers, and urge the Commission to reconsider its Order and correct these errors.

STANDARD OF REVIEW

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply to the Commission for a rehearing in respect to any matter determined in the proceeding. As the Commission has explained, "[t]he purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the

merits of issued orders pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." *In re: South Carolina Electric & Gas Company*, Order No. 2013-5 (Feb. 14, 2013). S.C. Code Ann. § 58-27-2100 provides that the findings contained in a Commission order ". . . shall be in sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence." The Commission must make "explicit findings of fact which allow meaningful appellate review." *Seabrook Is. Property Owners Ass'n v. S.C. Public Service Comm'n*, 303 S.C. 493, 497, 401 S.E.2d 672, 674 (1991) (internal citation omitted). The Commission must further fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record. *Porter v. S.C. Public Service Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). The Commission may not rely on factual findings that are simply incorrect. *Id.* 333 S.C. at 26-27, 507 S.E.2d at 335. Where material facts are in dispute, the Commission must make specific, express findings of fact; a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues. *Id.*

Section 58-27-1300 expressly states that "[n]o electrical utility, without the approval of the commission . . . may sell, . . . transfer, . . . or merge its utility property, powers, franchises, or privileges, or any of them . . . ." S.C. Code § 58-27-1300. To approve a merger, the Commission must determine whether it is in the public interest.[1] When applying Section 58-27-1300 to electric utility mergers in the past, the Commission has adopted the same "best interest of the public" standard of review that

[1] The Commission noted in its order that the Joint Applicants, through their filing merger application filing, "submitted themselves to the jurisdiction of the Commission to apply the provisions of S.C. Code Ann. § 58-27-1300 at the holding company level." Order at 43.

applies to other, non-electric utility mergers and property transfers. *See, e.g.*, Order No. 2005-684 at 3-4, Docket No. 2005-210-E (approving proposed merger between Duke and Cinergy Corporation after requiring merger applicants to respond to specific inquiries regarding the effect of the proposed transaction on the public interest, including costs, rate impacts, performance, and operational efficiency).

This "public interest" standard for approval of a merger must take into account state policy goals, including the goals of the South Carolina Energy Efficiency Act, S.C. Code § 48-52-10, *et seq.* (the "Energy Plan Act"). In enacting the Energy Plan Act, the General Assembly articulated its priorities explicitly in terms of the "public interest." S.C. Code § 48-52-210(10) (The energy plan must, in part, "ensure that state government is organized appropriately to handle energy matters ***in the best public interest***.") (emphasis added). Specifically, the Commission, in this proceeding, had the obligation to ensure that the merger would further the following statutory goals:

> (1) ensure access to energy supplies at the lowest practical environmental and economic cost;
> (2) ensure long-term access to adequate, reliable energy supplies;
> (3) ensure that demand-side options are pursued wherever economically and environmentally practical;
> (4) encourage the development and use of clean energy resources, including nuclear energy, energy conservation and efficiency, and indigenous, renewable energy resources;
> (5) ensure that basic energy needs of all citizens, including low income citizens, are met;
> (6) ensure that energy vulnerability to international events is minimized;
> (7) ensure that energy-related decisions promote the economic and environmental well-being of the State and maximize the ability of South Carolina to attract retirees, tourists, and industrial and service-related jobs; [and]
> (8) ensure that short-term energy decisions do not conflict with long-range energy needs[.]
> . . .

S.C. Code § 48-52-210(B).

ARGUMENT

The Commission Erred by Omitting Conditions Needed to Protect SCE&G Ratepayers From Another Multi-billion-dollar Boondoggle

In declining to accept proposed merger conditions to safeguard ratepayers against the risk of affiliate transactions related to contracts for gas capacity, the Commission rejected the arguments of Conservation Groups and their witness Gregory M. Lander, stating that they sought to "inject issues that are beyond the scope of this proceeding" and that "[t]here are other adequate remedies available to SCCCL and SACE to address SCE&G's fuel costs and affiliate transactions." Order at 31-32. As described in further detail below, this finding was erroneous and is contravened by reliable, probative, and substantial evidence in the record, which the Commission simply elected to disregard. Further, the Commission's order does not provide sufficient detail to enable a reviewing court to resolve the controverted questions that were presented in the proceeding regarding the need for review of natural gas contracts.

The Commission received significant evidence concerning Dominion's plans to expand the Atlantic Coast Pipeline ("ACP") to South Carolina; major cost overruns with that multi-billion-dollar ACP project; the lack of need for the ACP and the expense of gas shipped on the ACP relative to gas shipped on existing pipelines; and the need for Commission review of affiliate transactions to protect captive ratepayers from being saddled with a piece of energy infrastructure that, like V.C. Summer, may prove lucrative for utility shareholders but useless for ratepayers. Yet the Commission brushed aside this

evidence and rejected the recommendations of multiple witnesses that it should impose conditions to protect SCE&G ratepayers from affiliate transactions. This was error.[2]

1. The Commission Ignored Evidence that Dominion Affiliate Transactions Will Impose Billions of Dollars of Avoidable Costs on Virginia Ratepayers and Could Do the Same to South Carolina Ratepayers.

Evidence presented at the hearing showed that allowing for the extension of the Atlantic Coast Pipeline into South Carolina without thorough pre-review by this Commission as to whether costly new gas pipeline capacity is needed would put ratepayers on the hook for a very expensive but unnecessary piece of energy infrastructure. As Conservation Groups' witness Lander testified, the ACP is already billions of dollars over budget and years behind schedule. Tr. p. 2290, ll. 17-19. Further, his expert study shows that South Carolina already has sufficient gas supply from the Marcellus region via Transco's existing system. Tr. p. 3569, ll. 6-10. Capacity on the existing transmission pipeline system is not just available – it is available at much lower cost than capacity on a new greenfield pipeline like the ACP, as acknowledged by SCE&G Witness Jackson. Tr. p. 4007, ll. 9-11 ("[L]egacy capacity is going to be so much lower than any greenfield capacity."). New gas transmission costs will have outsized impacts in future years, as captive customers are forced to pay for the new pipeline capacity even if that capacity is not needed or even used, and even if the gas provided by that facility is not the cheapest available.

[2] In his concurring opinion, Commissioner Ervin correctly observed that while the Transco Settlement and the merger conditions regarding affiliate transactions "provide some limited checks on SCE&G's ability to enter into contracts with an interstate pipeline for natural gas transmission, they do not go far enough in protecting South Carolina's natural gas customers. I would have included a merger condition that would have allowed all affected parties to participate in a public proceeding before the [Commission] prior to the issuance of a FERC permit for the Atlantic Coast Pipeline to extend into South Carolina." Order at 116-17.

Substantial evidence at the hearing also showed that, given Dominion's past practice, SCE&G's captive retail ratepayers are directly threatened by affiliate transactions involving unnecessary gas pipeline capacity. Holding companies like Dominion have an obvious incentive to use their regulated utility subsidiaries as "anchor tenants" on pipelines built by their affiliates. Lander Surrebuttal, p. 4, ll. 17-20. Witness Lander testified that Dominion has done exactly this in Virginia by having its regulated utility (Virginia Electric and Power Co. d/b/a Dominion Energy Virginia) sign a multi-decade, multi-billion dollar capacity contract on the ACP, also a Dominion project, without ever studying whether it needed that capacity for power generation. Tr. p. 2287, ll. 4-14. ORS witness Kollen likewise testified that an affiliate transaction occurred when Dominion's regulated utility arm in Virginia signed a contract with Atlantic Coast Pipeline, LLC. Tr. p. 1008, ll. 3-13. Witness Lander testified, based on his experience as a witness in relevant Virginia State Corporation Commission proceedings, that Dominion intends to charge its customers 100 percent of the capacity contract costs, regardless of whether Dominion actually uses the pipeline to fuel its power plants, and that the contract will not save customers money. Tr. p. 2288, ll. 1-5. With the merger, SCE&G's ratepayers will be exposed to similar business practices: Dominion Chief Executive Officer Thomas Farrell testified that Dominion intends to operate SCE&G as it operates its Virginia utility. Tr. p. 3134, ll. 2-4. ORS witness Kollen testified that affiliate natural-gas purchase will be in excess of market prices and he is concerned about affiliate contracts, similar to the one described above, happening in South Carolina. Tr. p. 1010, ll. 8-21.

Dominion's business interest in earning a return on ACP expansion is so obvious, and so known, that no one doubts the company intends to push the ACP into South Carolina and that this is a main driving force in Dominion's bid to acquire SCANA and its captive customers. While Dominion witness Farrell claimed there are no "current plans" to bring the ACP into South Carolina, Dominion's plans could change at any moment. More importantly, he also conceded that Dominion would indeed like to bring the ACP to South Carolina. Tr. p. 3206, ll. 6-10. Transco witness Hector Alatorre recounted Mr. Farrell's prediction that the merger could open new "expansion opportunities including the Atlantic Coast Pipeline. . . ." Alatorre Direct, p. 4, ll. 3-6. *See* B. Peterson, *600-Mile Pipeline Headed to South Carolina*, Charleston Post and Courier (Sept 9, 2018) (quoting Farrell stating that merger "can open new expansion opportunities, including the Atlantic Coast Pipeline"). In other words, although the ACP is currently planned to terminate in Lumberton, North Carolina (just miles short of the South Carolina border), "everybody knows [the ACP is] not going to end in Lumberton." Alatorre Direct, p. 4, ll. 9-11 (quoting Dominion Vice President Dan Weekly). Certainly the gas industry knows it. *See Dominion One Step Away From Closing on SCANA Merger*, Marcellus Drilling News (November 20, 2018) ("When Dominion's Atlantic Coast Pipeline gets built and expanded into South Carolina, it will flow Marcellus/Utica gas to SCANA customers–an important and huge new market for our molecules. Hence our interest in this merger.").[3] Wall Street knows it too, viewing the merger as setting the table for extension of the ACP into South Carolina. *See* ("'Dominion acquiring Scana makes a lot of sense,' Shahriar Pourreza, a New York-based analyst for Guggenheim

[3] https://marcellusdrilling.com/2018/11/dominion-one-step-away-from-closing-on-scana-merger/ (last accessed Dec. 28, 2018)

Securities LLC, said . . . Dominion is building a major natural gas pipeline, the Atlantic Coast line, to the South Carolina border, and state officials want it extended, he said. The line could serve Scana customers.").[4]

In light of Dominion's track record in Virginia and Dominion's stated desire to push the ACP into South Carolina, the Commission should have, at a minimum and in order to "fully document its findings of fact," discussed and made explicit findings based on the evidence discussed above. But rather than make any mention of this evidence, much less discuss it, the Order instead regurgitates Dominion's self-serving testimony about Dominion's "culture" of customer service and claims—incredibly—that no party contested any of it. Order at 96-97. Failing to address or acknowledge evidence showing that Dominion hopes to extend the ACP into South Carolina and its history of using captive ratepayers to foot the bill for the ACP without state-level review was error and warrants reconsideration.

2. The Commission Erred in Not Protecting SCE&G's Ratepayers Against Being Forced to Pay for Another Multi-Billion-Dollar Boondoggle

In addition to failing to consider substantial record evidence concerning Dominion's record or its desire to expand the ACP into South Carolina, the Order fails to contain terms adequate to protect customers' interests in light of Dominion's foreseeable push to expand the ACP into the Palmetto State. The Commission should have imposed measures to prevent Dominion from using affiliate transactions to shift the cost of unneeded interstate natural gas pipeline construction projects onto captive utility customers. Such conditions are necessary to ensure that the merger does not increase

[4] https://www.bloomberg.com/news/articles/2018-01-03/dominion-energy-to-buy-scana-for-7-9-billion-in-all-stock-deal (last accessed Dec. 31, 2018).

customer costs in the long-term as a result of self-dealing between Dominion and its affiliates.

Several witnesses testified regarding the need for conditions to safeguard ratepayers from the risk of affiliate transactions. Conservation Groups' witness Lander testified that Dominion is exploiting a regulatory failure at the federal level when it proposes a new pipeline project, because the Federal Energy Regulatory Commission ("FERC") conducts no independent analysis of whether these pipeline projects are necessary for the public good and provides no heightened scrutiny when capacity purchasers are affiliated entities of the pipeline developers. Tr. p. 2286, ll. 3-18. Lander identified a regulatory "gap" where FERC approves construction of new interstate natural gas pipelines without sufficiently evaluating whether that pipeline is necessary. Lander Surrebuttal, p. 4, ll. 6-13. As long as a pipeline developer has sold capacity on its pipeline, FERC assumes – without any independent analysis of the individual contract – that there is a need for the pipeline. *Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at ¶ 41 (2018) ("Order on Reh'g") ("[E]ven though all but one of the ACP Project's shippers are affiliated with Atlantic, the Commission is not required to look behind precedent agreements to evaluate project need.").

Accordingly, witness Lander recommended that, as a condition of the merger, the Commission should require SCE&G before signing a contract for pipeline capacity to first engage in a needs analysis in a public proceeding before this Commission to identify demand, including analysis of the severity, frequency, and seasonal timing of such demand. Tr. p. 2290, ll. 12-18. Second, witness Lander recommended the Commission require SCE&G to undertake a comparative cost analysis identifying demand and

possible extension of expansion of services and facilities, including cost-effective demand-side management and energy efficiency and utilization of its and others' available peaking facilities. Tr. p. 2292, ll. 1-9. Witness Lander recommended that, should the identified demand warrant additional fuel supplies, then the Commission should require a public, transparent procurement process, possibly involving a competent third-party evaluator, reviewers, and reports to the Commission. Tr. p. 2292, ll. 1-9. Finally, witness Lander testified that the Commission should impose regulatory conditions on the proposed Merger that ensure vigorous, ongoing oversight of affiliate transactions. Tr. p. 2292, ll. 24-25. For example, witness Lander testified that the Commission could that require affiliate transactions which exceed a Commission-defined monetary and/or duration threshold, be subject to a public RFP and bidding process that would be reviewed prior to execution of a contract. Tr. p. 2293, ll. 14-25.

ORS witness Michael Seaman-Huynh testified that if the ACP is extended into South Carolina after a merger and SCE&G signs a contract for capacity on it, that would constitute an affiliate transaction. Tr. p. 1290, ll. 6-16. Witness Seaman-Huynh testified that ORS recommended that this Commission scrutinize affiliated transactions. Tr. p. 1289, ll. 11-15. ORS witness Lane Kollen testified that he believed it would be appropriate for the Dominion to get approval from the Commission before it signs contracts with itself when those contracts deal with "billions of dollars." Tr. p. 1011, ll. 1-14. Transco witness Alatorre also recommended that safeguards be put in place to prevent any self-dealing between Dominion and SCE&G should the merger be approved. Tr. p. 3554, ll. 15-19.

The Settlement Agreement between Transco and the Joint Applicants is insufficient to protect against the threat of affiliate transactions, however. Neither the Joint Applicants' case nor the Settlement Agreement with Transco adequately ensures that SCE&G only signs contracts that are necessary and lowest-cost. For instance, the Settlement Agreement requires SCE&G to issue an RFP before signing any new capacity contracts over 100,000 dekatherms per day. Tr. p. 3571, ll. 3-4. Tellingly, this threshold exceeds the size of every actual gas contract listed in Transco's Exhibit to its filed testimony, raising the real prospect that most or all realistic contracts are excluded from its provisions.[5]

Further to the point of the inadequacy of the Settlement for protecting against excess costs, the Settlement Agreement does not specify the parameters of the RFP. Tr. p. 3571, ll. 11-13. Nor does the Settlement Agreement does not identify the screening SCE&G will use to evaluate RFP responses. Tr. p. 3571, ll. 14-16. Because of these shortcomings, the Settlement Agreement does not give this Commission *any* prior review of the RFP, the screening criteria, or the transaction itself before it is consummated. Tr. p. 3571, ll. 20-22.

In sum, while the Settlement Agreement reached between two large gas pipeline companies, Transco and Dominion, may protect Transco's commercial interests, it does not protect the public interest. A clear regulatory gap has been identified and brought to the attention of the Commission, and the evidence shows that Dominion has exploited that gap to make Dominion's captive ratepayers pay for the ACP without prior state regulatory review to determine that the ACP is a needed or wise capital expenditure. The

[5] *See*, Exhibit HA1, listing gas contracts, all of which are below 46,000 dekatherms/day, at https://dms.psc.sc.gov/Attachments/Matter/c3e1cf4c-1d21-4d60-b10b-4fe3ad49f4ba

Order discusses none of this. In its discussion of merger conditions, the Commission summarily states that "[a]lthough there is disagreement regarding some aspects of affiliate transactions, the parties agree on many of the fundamental tenets." Order at 97. The absence of analysis is not cured by vague prohibitions against "improper self-dealing," Order at 101, which impose no specific measures to prevent abusive affiliate transactions in the first place and fail to recognize that after they take place, they cannot and will not effectively be remedied in look-back proceedings such as annual fuel cost riders. Indeed, this proceeding amply shows that once a utility spends billions of dollars on infrastructure, however needless, backward-looking procedures are inadequate to deter the natural tendency of regulated monopoly utilities to invest large amounts of capital with the expectation of cost recovery from their captive ratepayers.

The Commission's dismissal also does not provide "sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence." *Seabrook Is. Property Owners Ass'n*, 303 S.C. at 497, 401 S.E.2d at 674. The Commission "reject[ed] arguments by SCCCL and SACE and their witness, Gregory M. Lander, seeking to modify the settlement and inject issues that are beyond the scope of this proceeding." Order at 31-32. However, the Commission did not specify exactly which issues that witness Lander discussed are beyond the scope, making it impossible for Conservation Groups to seek review of the controverted issue raised. Furthermore, the Commission offers no explanation as to why the Transco Settlement is somehow within the scope of the proceeding while Conservation Groups' additional suggestions on the same topic, which were supported by ORS and the Speaker of the House, are outside it.

The Commission's rejection of other "proposed additions to the terms of the settlement agreement as being outside the Commission's jurisdiction and as matters for the South Carolina General Assembly," Order at 32, is also insufficient. The Order does not specify which "other proposed additions" are outside of the Commission's jurisdiction and which are matters for the South Carolina General Assembly. Aside from contravening the weight of substantial evidence in the case, these broad dismissals of controverted issues framed by the parties in this case for decision—including the issue of identifying and evaluating the need for additional capacity in the specific instance when contracts for that capacity may later be used as evidence in federal proceedings to justify the need for a new interstate pipeline—do not fully document the Commission's findings of fact (as required by *Porter*), do not reflect explicit findings of fact which allow meaningful appellate review (as required by *Seabrook*), and do not provide "sufficient detail to enable the court on review to determine the controverted questions presented" (as required by S.C. Code Ann. § 58-27-2100).

As stated in Commissioner Ervin's concurrence, without the conditions proposed above, "captive natural gas customers in our state may find themselves paying for Dominion's expensive interstate pipeline with no oversight by this Commission." Order at 116. It is undisputed that FERC review of any ACP extension into South Carolina will require *no* independent showing that the pipeline capacity is needed or least-cost for South Carolinians. The Commission should require SCE&G, before it or any of its affiliates sign a capacity contract related to the ACP, undertake a comparative cost analysis identifying demand and possible extension or expansion of services and facilities, including cost-effective demand-side management and energy efficiency and

utilization of its and others' available peaking facilities. Tr. p. 2292, ll. 1-9. Without those protections, the merger is not in the public interest, which the General Assembly discussed in the State Energy Plan as including measures to "ensure access to energy supplies at the lowest practical environmental and economic cost," "ensure that demand-side options are pursued wherever economically and environmentally practical," to "encourage the development and use of clean energy resources, including nuclear energy, energy conservation and efficiency, and indigenous, renewable energy resources," and to "ensure that basic energy needs of all citizens, including low income citizens, are met." S.C. Code § 48-52-210(B). These goals are not achieved by inviting, through omission of any meaningful pre-project review, construction of a destructive and exorbitant pipeline that carries fossil fuels from out of state to fuel power plants that emit air pollutants into South Carolina's skies. Lynch Ex. H, p. 3 (Hearing Ex. 101). Indeed, the Order gives no consideration at all to energy conservation, which the statute sets forth as a primary objective, and its ability to delay costly new fossil fuel generation – or avoid it altogether, as acknowledged by SC&EG witness John Raftery. Tr. pp. 2457, l. 22-2458, l. 3. The Order's failure to discuss the public interest in terms beyond Dominion's fiscal strength and a one-sided and incomplete rendering of its corporate culture was error, and the Commission should have imposed conditions that would require pre-construction review of Dominion's envisioned gas transmission pipeline to ensure that the combination being approved by the Commission, which opens the door for extension the ACP into South Carolina, is in the public interest.

CONCLUSION

This Commission should have imposed regulatory conditions to ensure vigorous, ongoing oversight of affiliate transactions to protect South Carolina ratepayers from being saddled with the costs associated with extension of the Atlantic Coast Pipeline if that project is unneeded or is not the least cost option. It is undisputed that FERC's limited oversight will not protect those interests. And if the V.C. Summer nuclear debacle taught South Carolina anything, it showed that after-the-fact review – trying to catch a multi-billion-dollar horse after it has left the barn – will leave ratepayers on the hook for needless utility projects.

The Commission should grant reconsideration and require that neither SCE&G nor any of its subsidiaries, over which the Commission has jurisdiction, may enter into any contract, whether for purchase of gas or for firm transportation capacity, that entails transportation using capacity on any interstate natural gas pipeline where such capacity does not already have a certificate from FERC, unless the Company proves, in a public proceeding before the Commission, by a preponderance of the evidence that the Company has (i) identified and determined the date and amount of new fuel delivery resource it needs (including an analysis of the severity, frequency, and seasonal timing of the need), (ii) objectively studied all available alternative fuel delivery resource options, including options other than such contract(s) to meet the identified and determined need, and (iii) determined that such contract(s) was the lowest cost available option taking into consideration fixed and variable costs and a reasonable projection of utilization.

Respectfully submitted this 31st day of December, 2018.

/s/ J. Blanding Holman, IV

J. Blanding Holman, IV (SC Bar No. 72260)
Elizabeth Jones (SC Bar No. 102748)
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
bholman@selcsc.org
ejones@selcsc.org

William C. Cleveland, IV (SC Bar No. 79051)
Southern Environmental Law Center
201 West Main St., Ste.14
Charlottesville, VA 22902-5065
Telephone: (434) 977-4090
wcleveland@selcva.org

Gudrun Thompson (admitted *pro hac vice*)
Southern Environmental Law Center
601 W Rosemary St # 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
gthompson@selcnc.org

Attorneys for South Carolina Coastal Conservation League and Southern Alliance for Clean Energy

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

In Re: Friends of the Earth and Sierra Club, Complainant / Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent	)	
In Re: Request of the South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	)	
	)	**CERTIFICATE OF SERVICE**
In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plan	)	

I certify that the following persons have been served with a copy of the foregoing comments on the Proposed Settlement Agreement between the Joint Applicants and South Carolina Solar Business Alliance for Consolidated Docket Nos. 2017-207-E, 2017-305-E, 2017-370-E, by electronic mail, at the addresses set forth below:

Andrew Bateman
Jeffrey M. Nelson
Jenny R. Pittman
Nanette S. Edwards
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
abateman@regstaff.sc.gov
jnelson@regstaff.sc.gov
jpittman@regstaff.sc.gov
nsedwar@regstaff.sc.gov

K. Chad Burgess.
Matthew W. Gissendanner
South Carolina Electric & Gas Company
220 Operation Way – MC C222
Cayce, SC 29033
chad.burgess@scana.com
matthew.gissendanner@scana.com

Robert Guild
314 Pall Mall
Columbia, SC 29201
bguild@mindspring.com

William T. Dowdey
William T. Dowdey
811 Jefferson Street
West Columbia, SC 29169
wtdowdey@gmail.com

Lynn Teague
3728 Wilmot Avenue
Columbia, SC 29205
803-556-9802
TeagueLynn@gmail.com

Stephanie U. Eaton
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
336-631-1062
seaton@spilmanlaw.com

Mitchell Willoughby
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
803-252-3300
mwilloughby@willoughbyhoefer.com

Lara B. Brandfass
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd., East
Charleston, SC 53501
lbrandfass@spilmanlaw.com

J. David Black
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, SC 29202
803-540-2072
DBlack@nexsenpruet.com

Emily W. Medlyn
U.S. Army Legal Services Agency - Regulatory Law
9275 Gunston Road
Fort Belvoir, VA 22060
703-614-3918
emily.w.medlyn.civ@mail.mil

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
717-795-2740
dwilliamson@spilmanlaw.com

Belton T. Zeigler
Womble Bond Dickinson (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
803-454-7720
belton.zeigler@wbd-us.com

Alexander G. Shissias
The Shissias Law Firm, LLC
1727 Hampton Street
Columbia, SC 29201
803-540-3090
alex@shissiaslawfirm.com

Damon E. Xenopoulos
Stone Mattheis Xenopoulos & Brew, P.C.
1025 Thomas Jefferson Street, N.W.
Eighth Floor, West Tower
Washington, DC 20007
DEX@smxblaw.com
Frank Knapp, Jr.
118 East Selwood Lane
Columbia, SC 29212
803-765-2210
fknapp@knappagency.com

James F. Walsh, Jr.
1436 Amelia Street
Orangeburg, SC 29116
803-534-6061
jfwwalsh@bellsouth.net

James N. Horwood
Peter J. Hopkins
Stephen C. Pearson
Jessica R. Bell
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
202-879-4000
james.horwood@spiegelmcd.com
peter.hopkins@spiegelmcd.com
steve.pearson@spiegelmcd.com
jessica.bell@spiegelmcd.com

Joseph K. Reid III
Elaine S. Ryan
Ellen T. Ruff
Robert A. Muckenfuss
McGuire Woods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
704-343-2000
jreid@mcguirewoods.com
eryan@mcguirewoods.com
eruff@mcguirewoods.com
rmuckenfuss@mcquirewoods.com

Lisa S. Booth
Tracey A. Huang
Irene Scouras
Dominion Energy Services, Inc.
120 Tredegar Street, Riverside 2
Richmond, VA 23233
804-819-2288
lisa.s.booth@dominionenergy.com
tracey.a.huang@dominionenergy.com
irene.scouras@dominionenergy.com

Robert E. Tyson, Jr.
Sowell Gray Robinson Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29201
rtyson@sowellgray.com

Michael J. Anzelmo
Chief of Staff and Legal Counsel to the Speaker
Post Office Box 11867
Columbia, SC 29211
michaelanzelmo@schouse.gov

Frank R. Ellerbe, III
Sowell Gray Robinson Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29201
803-227-1112
fellerbe@sowellgray.com

John H. Tiencken, Jr.
Christopher S. McDonald
The Tiencken Law Firm, LLC
234 Seven Farms Drive, Suite 114
Charleston, SC 29492
843-377-8415
jtiencken@tienckenlaw.com
cmcdonald@tienckenlaw.com

Michael N. Couick
Christopher R. Koon
The Electric Cooperatives of South Carolina, Inc.
808 Knox Abbott Drive
Cayce, SC 29033
803-739-3034
mike.couick@ecsc.org
chris.koon@ecsc.org

Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
BCook@scag.gov
ESmith@scag.gov

Susan B. Berkowitz
South Carolina Appleseed Legal Justice Center
Post Office Box 7187
Columbia, SC 29202
803-779-1113
sberk@scjustice.org

John B. Coffman
871 Tuxedo Blvd.
Webster Groves, MO 63119
573- 424-6779
john@johncoffman.net

Richard L. Whitt
Timothy F. Rogers
Austin & Rogers, PA
508 Hampton Street, Suite 300
Columbia, SC 29201
803-256-4000
RLWhitt@AustinRogersPA.com
tfrogers@austinrogerspa.com
CASchurg@AustinRogersPA.com

Scott Elliott
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
803-771-0555
selliott@elliottlaw.us
linda@elliottlaw.us

James R. Davis
J. Davis Law Firm
BB&T Plaza, Suite 211B
234 Seven Farms Drive, MB #16
Daniel Island, SC 29492
843-642-8333
jim@jdavispc.com

Michael T. Rose
Mike Rose Law Firm
406 Central Avenue
Summerville, SC 29483
843- 871-1821
mike@mikeroselawfirm.com

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
843-727-2229
andy@austengowder.com

Dino Teppara
104 Egret Court
Lexington, SC 29072
Dino.Teppara@gmail.com

Allen Mattison Bogan
B. Rush Smith, III
Carmen Harper Thomas
William C. Hubbard
Nelson Mullins Riley & Scarborough LLP
1320 Main Street/17th Floor
Columbia, SC 29201
rush.smith@nelsonmullins.com
matt.bogan@nelsonmullins.com
carmen.thomas@nelsonmullins.com
william.hubbard@nelsonmullins.com
Weston Adams, III
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
weston.adams@nelsonmullins.com

Camden N. Massingill
Matthew T. Richardson
Wallace K. Lightsey
Wyche Law Firm
801 Gervais Street, Suite B
Columbia, SC 29201
cmassingill@wyche.com
mrichardson@wyche.com
wlightsey@wyche.com
Adam Protheroe
P.O. Box 7187
Columbia, SC 29202
adam@scjustice.org
Kevin K. Bell
Sowell Gray Robinson Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29201
803-227-1112
kbell@robinsongray.com

This the 31st day of December, 2018.

s/ Gudrun Thompson